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#13

In re Application of: Israel et al

June 4, 1993

Serial Number: 07/864,692

Filed: April 7, 1992

For: Recombinant Bone Morphogenic Protein Heterodimers, Compositions and Methods of Use

This is a decision on the request for "an extension of time within the sixth month pursuant to 37 CFR 1.136(a) and (b) in which to respond to the Notice to Comply mailed October 7, 1993" in order to reset "the time for response from November 7, 1992 to April 7, 1993," which was filed on March 29, 1993. The authority to decide requests under Rule 136(b) has been delegated to the Group Director. MPEP 1002.02(c).

The record shows that in the action of January 25, 1993 (Paper No. 9), the Office held applicants' communication of November 9, 1992, to be a bona fide attempt to respond to the Notice to Comply with the Sequence Rules which was mailed on October 7, 1992, and set a one (1) month time limit for response. The Office action also noted that options available to applicants were to extend the period to respond to the Notice to Comply by filing an extension of time under 37 CFR 1.136(a) or (b). As stated above, applicants attempted both options on March 29, 1993, which was almost six (6) months from the date of the Notice to Comply. It is noted that the time limit of one (1) month set in the Office action of January 1, 1993, cannot be extended. 37 CFR 1.135(c); MPEP 702.02(c).

It is well settled that a request for an extension of time must be accompanied by a showing of sufficient cause for extending the period for response for a reasonable, specified period of time and, must be filed during the time set for response. See 37 CFR 1.136(b); MPEP 710.02(e). Where an Office action which sets a one (1) month shortened statutory period for response, this period for response can be extended up to four (4) months via petition and fee under Rule 136(a) to expire up to the end of the fifth month from the date of the mailing of that Office action. In order to obtain more than a four (4) month extension to a period for response of

Serial No. 07/864,692

- 2 -

one (1) month, a petition and fee under Rule 136(a) and a request for extension of time pursuant to Rule 136(b) must be filed no later than the last day of the five month response period.

Thus, the present request for an extension of time fails both requirements. Not only is there no showing of sufficient cause stating a specified extension period, but the request was untimely as it was filed within the sixth month from the date of the Notice to Comply.

Accordingly, the request for extension of time is DENIED.

This application stands abandoned as of February 26, 1993, in view of the facts that applicants failed to respond during the one (1) month time limit set in the Office letter of January 25, 1993, and failed to timely file a petition and fee under Rule 136(a) and a request an extension of time under Rule 136(b).

This application is being forwarded to the Supervisory Patent Examiner of Art Unit 1812 for action consistent with the status of this application.

A handwritten signature in black ink, appearing to read 'Charles F. Warren', is written over a horizontal line.

Charles F. Warren
Deputy Director, Examining Group 1800

Legal Affairs Department
Genetics Institute
87 CambridgePark Drive
Cambridge, MA 02140